SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 234.

Office Supreme Court U. S.
FILED
APR 10 1906
JAMES H. McKENNEY,
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JOSIAH MILLARD, APPELLANT,

vs.

ELLIS H. ROBERTS, TREASURER OF THE UNITED STATES; HENRY B. F. MACFARLAND, HENRY L. WEST, AND JOHN BIDDLE, COMMISSIONERS OF THE DISTRICT OF COLUMBIA; THE PHILADELPHIA, BALTIMORE AND WASHINGTON RAILROAD COMPANY, THE BALTIMORE AND OHIO RAILROAD COMPANY, AND THE WASHINGTON TERMINAL COMPANY.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

WAYNE MACVEAGH,
FREDERIC D. MCKENNEY,
JOHN S. FLANNERY,
Attorneys for the Philadelphia, Baltimore and Washington Railroad Company.

GEORGE E. HAMILTON,
MICHAEL J. COLBERT,
Attorneys for the Baltimore and Ohio Railroad Company and the Washington Terminal Company.

HENRY M. HOYT,
Solicitor General,
for the Treasurer of the United States,

EDWARD H. THOMAS,
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APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLEES.

This is an appeal from a decree of the Court of Appeals of the District of Columbia affirming a decree of the Supreme Court of said District in favor of the appellees in a suit in equity instituted by the appellant, as a citizen of the United States and a taxpayer of the District of Columbia, to restrain and enjoin the payment of the sum of $1,500,000 to the

Baltimore and Ohio Railroad Company appropriated by the act of Congress approved February 12, 1901 (31 Stats. L., 774), providing for the elimination of grade crossings upon the line of said railroad company in the District of Columbia, and the payment of a like sum to the Philadelphia, Baltimore and Washington Railroad Company (the successor by merger or consolidation of the Baltimore and Potomac and the Philadelphia, Wilmington and Baltimore Railroad Companies) appropriated by the act of Congress approved February 28, 1903 (32 Stats. L., 909), commonly known as the Union Station bill, and seeking to have said acts, as well as the act of February 12, 1901 (31 Stats. L., 767), providing for the elimination of grade crossings upon the line of the Baltimore and Potomac Railroad Company, in said District, declared unconstitutional and void in so far as they direct said payments to be made and authorize the levying of a tax for the purpose of meeting them.

The objections to the statutes in question set forth in the original and amended bills of complaint and in the appellant's assignments of error seem to us to resolve themselves into two propositions:

1. That the appropriations for payments to said railroad companies carried by said acts of 1901 and 1903 are unconstitutional and void because they amount to a gratuity and constitute an appropriation of public moneys for a private use.

2. That said acts are void because they are revenue measures and originated in the Senate instead of in the House of Representatives, as required by article I, section 7, of the Constitution of the United States (Rec., 11).

The case came on for hearing in the Supreme Court of the District of Columbia before Mr. Justice Anderson upon the original and amended bills and demurrers interposed thereto

by the various defendants, and on July 2, 1904, said court entered a decree sustaining said demurrers and dismissing the cause for want of equity (Rec., 17, 18-27). Upon appeal to the Court of Appeals this decision of the lower court was affirmed (Rec., p. 29-32).

Points and Authorities.

I.

THE ACT OF FEBRUARY 28, 1903, AND THE TWO ACTS APPROVED FEBRUARY 12, 1901, DO NOT APPROPRIATE PUBLIC MONEYS OR LEVY TAXES UPON THE TAXPAYERS OF THE DISTRICT OF COLUMBIA FOR PRIVATE PURPOSES.

The Baltimore and Ohio Railroad Company was authorized to enter the District of Columbia by the act of Congress approved March 2, 1831 (4 Stats. L., 476), and from the date of the completion of its railroad in said District to the date of the passage of said act of February 12, 1901, it had acquired, and had been exclusively occupying and using, under the authority of various acts of Congress and under contracts with the municipal authorities of the District of Columbia, portions of the public streets, public reservations, and other valuable property of the United States, the District of Columbia, and of individuals. In consideration for the conveyance to the United States of the valuable property mentioned in the act of 1901 and of the relinquishment of its vested rights in the public streets and reservations therein specified, and as a contribution towards the great expense which it was called upon to incur for the elimination of grade crossings upon its line of railroad in the District of Columbia, this payment of $1,500,000 was authorized, one-half thereof being contributed by the United States and the other half to be paid out of the revenues of the District of Columbia.

The consideration for the payment is expressly set forth in paragraph 3 of the 8th section of said act, which reads:

"In consideration of the surrender by the Baltimore and Ohio Railroad Company, under the requirements of this act, of its rights under the several acts of Congress heretofore passed, and under its several contracts with the municipal authorities of the city of Washington authorized by said acts of Congress, and in consideration of the large expenditures required for the construction of the new terminals, viaduct, and connecting railroads, as required by this act, to avoid all grade crossings of streets and avenues within the city of Washington, and, further, in consideration of the grant and conveyance to the United States of the lands included within the limits of the roadway and right of way of the Washington Branch railroad, which can be used for a street or avenue for the public benefit, the sum of one million five hundred thousand dollars, to be paid to said railroad company toward the cost of the construction of said elevated terminals, viaduct, and structures within the city of Washington, shall be, and is hereby, appropriated, one-half to be paid out of any money in the Treasury of the United States not otherwise appropriated, the other half to be paid out of the revenues of the District of Columbia. The sum so appropriated shall be paid upon presentation of a certificate by the Commissioners of the District of Columbia that the said viaduct has been completed as required by this act.

"In order to provide for the one-half of said amount chargeable to the District of Columbia, the Commissioners thereof shall, on the first day of July following the passage of this act, and annually thereafter, pay over to the Treasurer of the United States, out of the revenues of the District of Columbia, the sum of one hundred and fifty thousand dollars, to be invested by the said Treasurer in interest-bearing bonds of the United States or the District of Columbia, until the full sum of seven hundred and fifty thousand dollars, as provided herein, shall have been paid."

Nor is there any stronger foundation for the contention of the appellant that the payment to be made to the Philadelphia, Baltimore and Washington Railroad Company is a gratuity and without consideration.

The Baltimore and Potomac Railroad Company, the predecessor of the Philadelphia, Baltimore and Washington Railroad Company, was authorized to extend its lines of railroad into the District of Columbia by the act of Congress approved February 5, 1867 (14 Stats. L., 387), and by the act of Congress approved May 21, 1872 (17 Stats. L., 140), was authorized to hold, use, and occupy a portion of the public reservation at the intersection of Sixth and B streets N. W., and to construct thereon a passenger depot. This grant was coupled with the condition that the company should pay taxes thereon to the District of Columbia.

Subsequently, by the act of Congress approved February 12, 1901, which authorized the elimination of the grade crossings upon the line of the Baltimore and Potomac Railroad Company in the District of Columbia, the right of that company to occupy and use the portion of this reservation, commonly called the "Mall," which it had theretofore been occupying under authority of Congress and paying taxes upon for more than thirty years, was granted to it in perpetuity, and the grant was enlarged to include a large additional area of the reservation which, until then, had been in the exclusive possession of the United States. This act made no appropriation of money to the Baltimore and Potomac Railroad Company, the right to exclusively and perpetually use and occupy this valuable property of the United States evidently being regarded as the equivalent of the money contribution to be made to the Baltimore and Ohio Railroad Company by the twin act of the same date relating to the latter company.

The ink was hardly dry upon the signatures approving these acts of 1901 before the question of bringing both railroad companies together in a union station was agitated by the property-owners and Citizens' Associations of the District before the Commissioners and Congress. While the railroad companies were content with the existing legislation, they finally acquiesced in this seemingly unanimous

desire of the people of the District for a union station and expressed a willingness to build such a station and the necessary connections therewith, although such a vast improvement would subject them to an expense greatly in excess of that required by the acts of 1901. The act of February 28, 1903, was the result.

The object of this statute and the consideration for the payment of the $1,500,000 to the Philadelphia, Baltimore and Washington Railroad Company is clearly set forth in paragraph 2, section 8, thereof, which reads:

"The construction of the lines of railroad hereinbefore mentioned, connecting the railroad of said Philadelphia, Baltimore and Washington Railroad Company with said main passenger station and terminal, whether constructed wholly by said Philadelphia, Baltimore and Washington Railroad Company or said terminal company, or partly by each, shall relieve said Philadelphia, Baltimore and Washington Railroad Company of any and all duties and obligations respecting relocation of its present passenger tracks and terminal, and location, construction, and operation of new passenger station and new terminal tracks, as prescribed in the act relating to the Baltimore and Potomac Railroad Company, approved February twelfth, nineteen hundred and one; and *upon completion* either by said Philadelphia, Baltimore and Washington Railroad Company or said terminal company, or in part by one and in part by the other, of said connecting lines of railroad ready for use, in connection with said main passenger station and terminal, as contemplated by this act, and within five years from the passage of this act the said Philadelphia, Baltimore and Washington Railroad Company shall be, and it is hereby, required to remove its present eastern connection between its passenger station and its line on Virginia avenue via Sixth street, including the tracks on Sixth street, and its western connection via Maryland avenue, *and to convey its passenger-station building to the United States. And in consideration thereof, and of the relinquishment and surrender by said Philadelphia, Baltimore and Washington Railroad Company of its right to occupy and use the portion of the Mall and to maintain thereon a new passenger station and terminals, granted to the Baltimore and*

Potomac Railroad Company by the act aforesaid in consideration of and as a contribution toward the large expenditure to be made by said company in the relocation and improvement of its line of railroad and elimination of grade crossings resulting therefrom, as required by said act, the sum of one million five hundred thousand dollars, shall be paid to said Philadelphia, Baltimore and Washington Railroad Company, its successors and assigns, out of any moneys in the Treasury of the United States not otherwise appropriated, and said sum of one million five hundred thousand dollars is hereby expressly appropriated for this purpose, and shall be paid upon presentation of a certificate by the Commissioners of the District of Columbia that said passenger station and terminal and connecting lines of railroad contemplated by this act are ready for occupancy. Except as modified by this act, all provisions for said act relating to the Baltimore and Potomac Railroad Company approved February twelfth, nineteen hundred and one, and all rights, powers, remedies, and processes thereby conferred on said last-named company, or upon the Southern Railway Company, shall remain and continue in full force, and with like effect as if herein re-enacted at length; and all rights, powers, and privileges granted to, or duties imposed upon, said Philadelphia, Baltimore and Washington Railroad Company by this act shall accrue to and devolve upon its successors and assigns, as provided with respect to the Baltimore and Potomac Railroad Company by section fifteen of said act relating to said Baltimore and Potomac Railroad Company, approved February twelfth, nineteen hundred and one, and all provisions of said section shall be applicable thereto in all respects, and in like manner as they are made applicable to the rights, privileges and duties granted to or imposed upon said company by said last-named act."

It will be observed that no portion of this appropriation of $1,500,000 for the Philadelphia, Baltimore and Washington Railroad Company is payable out of the revenues of the District of Columbia or is to be raised by levying a tax upon the property of its taxpayers. The appellant, as a taxpayer of the District of Columbia, had no such interest in this matter, therefore, as would entitle him to the protection of equity.

This act also expressly provides that this payment is not to be made to said railroad company until it has fully performed the obligations imposed upon it by completing the union terminal, conveying its present passenger station to the United States and relinquishing and surrendering its rights to use and occupy the Mall. So far as this specific payment is concerned, therefore, even if the appellant had any interest in the matter enforceable in a court of equity, his action in instituting this suit is premature.

The abolition of these dangerous grade crossings would of itself have been a sufficient consideration to support the payment of the sum of three millions of dollars to these railroad companies. But the following quotation from the report of the Senate Committee of the District of Columbia upon said bill, which will be found in Senate Document 220, 57th Cong., 2d sess., pp. 212, 213, shows there was no doubt in the minds of the legislators who framed it that the payments in question were to be made to the railroad companies upon a valuable consideration:

"During the Fifty-sixth Congress legislation was enacted enlarging the occupation of the railroad in the Mall. This action was taken only after years of effort to obtain the withdrawal of the road from public space, and because of the demand for the elimination of grade crossings, and increased facilities for handling the rapidly growing traffic. In the adjustment then made, the railroad received land in the Mall in lieu of the usual cash payment of one-half the cost of track elevation.

"The proposition now is that the United States shall buy, at a fair valuation, this land on which the railroad has been paying taxes for thirty years, and that the railroad shall use the money so received as a portion of the expense of building a tunnel and making connections with the proposed union station.

"This proposition does not come from the railroads. They are satisfied with their present situation. When the question of improving the District of Columbia was taken up, the removal of the railroad tracks from the Mall was considered absolutely essential. The Mall was laid out to form the great

approach to the Capitol, and it is impossible to conceive any adequate treatment of the capital park system without freeing the Mall from the railroad tracks and station. When this view of the situation was placed before the president of the Pennsylvania railroad, he replied, after very careful consideration, that while he did not desire any change, yet he realized that if Washington is to have the development of a capital city in the true sense of that word, the railroad must leave the Mall, and he was willing to accept any adjustment that would be fair to the stockholders whose interests he represented.

"From the standpoint of economical railroad management, the proposed union station has little to recommend it. The terminal charges are increased from about 40 cents to $1.20 per passenger car, and there will be no corresponding increase in passengers. The Baltimore & Ohio Company, which does a comparatively small passenger business, claims that it would be much better off by keeping the C Street site provided for in existing legislation, especially as contemplated change compels that road to give up its present extensive and well-located freight yards, and purchase city blocks in Eckington."

We submit that Congress, in the acts themselves, having declared that the appropriations were made upon a valuable consideration and for a public purpose, the matter is not open to review in the courts.

"But sometimes the public purpose is clear, though the immediate benefit is private and individual. For example, the Government promises and pays bounties and pensions; but in every case the promise or payment is made on a consideration of some advantage or service given or rendered, or to be given or rendered, to the public, which is supposed to be an equivalent; and the law for the payment has in view only the public interest, and does not differ in principle or purpose from a law for the payment of salaries to public officers. The same is true where a State continues the payment of salaries to officers who have become superannuated in its service. The question whether they shall be paid is purely political, and resolves itself into this: whether the State will thereby probably secure better and

more valuable service, and whether therefore it would be wise and politic for the State to give the seeming bounty."

Cooley's Principles of Constitutional Law, 57, 58.
Cooley on Taxation, 2d ed., p. 111.

This court has repeatedly held that, although railroad corporations are private corporations as distinguished from those created for municipal and governmental purposes, *their uses are public.*

N. Y. & N. E. R. R. Co. *vs.* Bristol, 151 U. S., 556, 571.

The power of States, counties, and municipalities to aid in the construction of railroads, upon the ground that railroads are *quasi* public institutions created and existing for the benefit of the public at large, is so well established by abundant authority that a mere reference to some of the many decisions on this point would seem to be sufficient.

Olcott *vs.* Supervisors, 16 Wall., 698.
Curtis *vs.* County of Butler, 24 How., 447, 449.
Rogers *vs.* Burlington, 3 Wall., 665.
St. Joseph *vs.* Rogers, 16 Wall., 663.
Gillman *vs.* Sheboygan, 2 Black., 515.
Larned *vs.* Burlington, 4 Wall., 276.
Railroad Co. *vs.* County of Otoe, 16 Wall., 673.
Twnshp. of Pine Grove *vs.* Talbott, 19 Wall., 67 5.
U. S. *vs.* Railroad Co., 17 Wall., 330.
Loan Ass'n *vs.* Topeka, 20 Wall., 661.
Otoe Co. *vs.* Baldwin, 111 U. S., 15.

The United States possesses complete jurisdiction, both of a political and municipal nature, over the District of Columbia. When Congress, acting as the municipal legislature of said District, in the exercise of the police power, enacts legislation for the benefit of the health and safety of the community and makes an appropriation and levies an assess-

ment to carry said legislation into effect, the propriety of its action is not open to review by the courts.

Wight *vs.* Davidson, 181 U. S., 371, 381.

In Wilson *vs.* Lambert (168 U. S., 611) the act of September 27, 1890 (26 Stats., 492), providing for the establishment of the Rock Creek Park and authorizing the levying of an assessment upon the taxpayers of the District of Columbia to defray the cost thereof, was held to be a valid exercise of the powers of Congress in legislating for the District of Columbia.

In the case of The N. Y. & N. E. R. R. Co. *vs.* Bristol (151 U. S., 556), in which was involved an act of the legislature of the State of Connecticut abolishing grade crossings as a menace to public safety, this court held that this was a proper exercise of the police power of the State, and Mr. Chief Justice Fuller, in delivering the opinion of the court, said:

"It must be admitted that the act of June 19, 1899, is directed to the extinction of grade crossings as a menace to public safety, and that it is therefore within the exercise of the police power of the State. And, as before stated, the constitutionality of similar prior statutes as well as of that in question, tested by the provisions of the State and Federal constitutions, has been repeatedly sustained by the courts of Connecticut."

In this case the court also held that, said crossings being in the nature of nuisances, the legislature might cause them to be abated and require either party to pay the whole or any portion of the expense.

See also

Wabash R. R. Co. *vs.* Defiance, 167 U. S., 88, 98.
Chicago, etc. R. R. *vs.* Nebraska, 170 U. S., 57, 74.

But even if the appropriations made by the acts of 1901 and 1903 could be regarded as donations they would still be legal and the acts providing therefor constitutional and valid.

From the beginning of this Government Congress has made donations for the benefit of public-service corporations, in the nature of land grants, subsidies, and bounties, and such donations have been invariably sustained. As was said by this Court in the case of Allen *vs.* Smith (173 U. S., 402), "bounties granted by the Government are never pure donations, but are allowed either in consideration of service rendered or to be rendered, objects of public interest to be obtained, production or manufacture to be stimulated, or moral obligations to be recognized."

In the Sugar Bounty cases (U. S. *vs.* Realty Co., 163 U. S., 440), Mr. Justice Peckham says:

"Under the provisions of the Constitution, (article I, section 8,) Congress has power to lay and collect taxes, etc., 'to pay the debts' of the United States. Having power to raise money for that purpose, it of course follows that it has power when the money is raised to appropriate it to the same object. What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the Government which are thus founded. To no other branch of the Government than Congress could any application be successfully made on the part of

the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of that body. Payments to individuals, not of right, or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the Government by virtue of acts of Congress, appropriating the public money, ever since its foundation. Some of the acts were based upon considerations of pure charity. A long list of acts directing payments of the above general character is appended to the brief of one of the counsel for the defendants in error. The acts are referred to not for the purpose of asserting their validity in all cases, but as evidence of what has been the practice of Congress since the adoption of the Constitution. See, also, among other cases in this court, Emerson *v.* Hall, 13 Pet., 409; United States *v.* Price, 116 U. S., 43; Williams *v.* Heard, 140 U. S., 529. The last cited case arose under an act of Congress in relation to the Alabama claims.

* * * * * * *

"In regard to the question whether the facts existing in any given case bring it within the description of that class of claims which Congress can and ought to recognize as founded upon equitable and moral considerations and grounded upon principles of right and justice, we think that generally such question must in its nature be one for Congress to decide for itself. Its decision recognizing such a claim and appropriating money for its payment can rarely, if ever, be the subject for review by the judicial branch of the Government. Upon the general principle, therefore, that the Government of the United States, through Congress, has the right to pay the debts of the United States, and that the claims in these cases are of a nature which that body might rightfully decide to constitute a debt payable by the United States upon considerations of justice and honor, we think the act of Congress making appropriations for the payment of such claims was valid without reference to the question of the validity or invalidity of the original act providing for the payment of bounties to manufacturers of sugar, as contained in the tariff act of 1890" (Op., 444).

II.

SAID ACTS OF 1901 AND 1903 ARE NOT REVENUE OR TAX MEASURES IN THE SENSE CONTEMPLATED BY THE CONSTITUTION.

It plainly appears from the title and recitals of the acts in question, as we have hereinbefore shown, that the sole purpose of this legislation was to bring about the construction of a union terminal and the abolition of grade crossings in the District of Columbia. As an incident thereto, the acts made appropriations to the railroad companies to compensate them for the valuable property which they were directed to convey to the United States and the vested rights which they were required to relinquish, and also as a partial contribution from the District of Columbia and the United States towards the large expenditures which these companies were called upon to make to eliminate grade crossings for the protection of the lives and health of the residents of the District of Columbia.

The provisions of section 7, article I, of the Constitution, which requires that "all bills for raising revenue shall originate in the House of Representatives," cannot apply to any of the acts involved in this case, even if we should admit for the purposes of the argument that said acts did originate in the House of Representatives instead of in the Senate.

By "bills" is meant "money bills" (Story's Constitution, sec. 874). In practice it is applied to bills to levy taxes in the strict sense of the word (2 Elliot's Debates, 283, 284; Story's Constitution, sec. 880).

The case of *Twin City Bank vs. Nebeker* (167 U. S., 196) seems to us to be decisive of this question. That was a suit filed by the bank against the Treasurer of the United States to recover certain money paid to him under protest, the contention of the bank being that the section of the act of June 3, 1864, providing a national currency secured by a

pledge of United States bonds, and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within the meaning of the clause of the Constitution just referred to. The bill in that case had originated in the House of Representatives, but the provision imposing the tax was not in the bill as it passed the House, but originated in the Senate by amendment. Mr. Justice Harlan, in delivering the opinion of the court, said:

"Mr. Justice Story has well said that the practical construction of the Constitution and the history of the origin of the constitutional provision in question proves that revenue bills are those that levy taxes in the strict sense of the word, and are not bills for other purposes which may incidentally create revenue (Story on Constitution, section 880).

"The main purpose that Congress had in view was to provide a national currency based upon United States bonds, and to that end it was deemed wise to impose the tax in question. The tax was a means for effectually accomplishing the great object of giving to the people a currency that would rest, primarily, upon the honor of the United States, and be available in every part of the country. There was no purpose by the act or by any of its provisions to raise revenue to be applied in meeting the expenses or obligations of the Government."

* * * * * * *

"This interpretation of the statute renders it unnecessary to consider whether, for the decision of the question before us, the journals of the two houses of Congress can be referred to for the purpose of determining whether an act duly attested by the official signatures of the President of the Senate and Speaker of the House of Representatives, and the President, and which is of record in the State Department as an act passed by Congress, originated in the one body or the other."

A clause of the act of March 3, 1875 (18 U. S. Stats. L., 377), increasing the rate of postage on certain mail matter, was held to be constitutional, although it originated in the

Senate and was not an amendment to a bill for raising revenue, originating in the House of Representatives, upon the ground that it was not a bill for raising revenue, within the meaning of art. I, sec. 7, subdivision 1, of the Constitution, which provides that "All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments, as on other bills."

U. S. *vs.* James, 13 Blatch., 207.

The characteristic feature of bills for raising revenue is that they draw money from the citizen and give no direct equivalent in return, unless in the employment, in common with the rest of the citizens, of the benefit of good government.

U. S. *vs.* James, 13 Blatch., 208.

The act of February 28, 1903, from the recitals in its enacting clause and the fact that it has received the approval of the President and has been regularly enrolled among the statutes of the United States, must be presumed to have been passed by Congress in strict accord with the letter and spirit of the Constitution, and resort cannot be had to the journals of the two houses to overthrow this presumption.

Field *vs.* Clark, 143 U. S., 649, 680.
Harwood *vs.* Wentworth, 162 U. S., 547, 562.
Twin City Bank *vs.* Nebeker, *supra.*

Nor is there anything in the case of *Wilkes County vs. Coler*, 180 U. S., 524, relied upon by the appellant, which in any way restricts the rule laid down by this Court in *Field vs. Clark*. The court in that case was construing a provision of the constitution of North Carolina requiring all acts of the legislature providing for the issuance of bonds to be read three times and so noted upon the legislative journals. Another provision of this constitution required those journals to be published annually, so that all persons would

be in a position to ascertain for themselves that the legislature had complied with the constitutional requirements. In that case the court held that under these special and peculiar provisions of the North Carolina constitution resort could be had to the legislative journals to see whether or not the laws had been properly enacted. The court, however, is careful to distinguish that case from the case of *Field vs. Clark,* and to reaffirm the latter.

The acts of Congress which are attacked in this proceeding by the appellant, we respectfully submit, constitute a contract between the United States and the District of Columbia, upon the one hand, and the railroad companies, upon the other. These companies, relying upon the promise of the other contracting parties, have obligated themselves to pay out millions of dollars, and have already expended, in the performance of the work required by these statutes and in the acquisition of valuable property and rights, vast sums of money.

Should this legislation which has received the careful and mature consideration of the business men of this District, the Commissioners and the committees of Congress, be declared unconstitutional, these contractual obligations would be impaired, if not wholly destroyed, and the railroad companies would suffer irreparable loss. Nor would the companies be the only sufferers. The United States would be prevented from using the valuable tract of land in the heart of the city constituting a part of the "Mall," and the residents of the District of Columbia would be deprived of a union station of an ornamental and monumental character, which they have been endeavoring to obtain for years, and would be denied the protection to life and limb which would follow the abolition of grade crossings.

Where the consequences that would result from the destruction of statutes solemnly enacted are so grave, we think the court would be entirely justified in refusing to declare the acts unconstitutional although defects in the laws or

irregularities in their enactment were clearly pointed out. As was said by Mr. Justice Peckham in *Nicol vs. Ames* (173 U. S., 514):

"It is always an exceedingly grave and delicate duty to decide upon the constitutionality of an act of Congress of the United States. The presumption, as has frequently been said, is in favor of the validity of the act, and it is only when the question is free from any reasonable doubt that the court should hold an act of the law-making power of the nation to be in violation of that fundamental instrument upon which all the powers of the Government rest."

Upon the whole case it is respectfully submitted that the supreme court of the District of Columbia was right in dismissing the complainant's bill, and that the decree appealed from should be affirmed.

WAYNE MACVEAGH,
FREDERIC D. MCKENNEY,
JOHN S. FLANNERY,
Attorneys for the Philadelphia, Baltimore and Washington Railroad Company.

GEORGE E. HAMILTON,
MICHAEL J. COLBERT,
Attorneys for the Baltimore and Ohio Railroad Company and the Washington Terminal Company.

HENRY M. HOYT,
Solicitor General,
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